

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CODY HART, et al.,

Plaintiffs,

v.

LISA JANICKI, et al.,

Defendants.

CASE NO. C23-832 MJP

ORDER DENYING PLAINTIFFS’
MOTION FOR CONTEMPT AND
MOTIONS TO DISQUALIFY

This matter comes before the Court on Plaintiffs’ Motion for Contempt (Dkt. No. 11) and two Motions to Disqualify (Dkt. Nos. 13, 20). Having reviewed the Motions and all supporting materials, the Court DENIES the Motions.

BACKGROUND

A. Motion for Contempt

In their Motion for Contempt, Plaintiffs seek an “order of criminal contempt, pursuant to Federal Rule of Civil Procedure 42(b)” for alleged violations of “18 U.S.C. § 1001, and 18 U.S. Code § 402.” (Mot. for Contempt at 1 (Dkt. No. 11).) Plaintiffs believe that Defendants’ counsel,

1 Deputy Skagit County Prosecutor, Erik Pedersen, lacks authority to represent Defendants. They
2 believe that the Skagit County Prosecuting Attorney, Richard Weyrich, and Pedersen failed to
3 obtain and deposit a public bond before January 1, 2023 and that this caused Weyrich to vacate
4 his office. Plaintiffs then argue that if Weyrich was no longer in office, he could not appoint
5 Pedersen as counsel and that Pedersen therefore lacks authority to represent Defendants.

6 Plaintiffs have submitted a Request for Judicial Notice and cite to its exhibits in support
7 of the Motion for Contempt. (See Memorandum ISO Mot. for Contempt (Dkt. No. 12), and
8 Plaintiffs' Request for Judicial Notice (RJN) (Dkt. No. 14).) One of the exhibits that Plaintiffs
9 ask the Court to consider is Weyrich's public bond, which was obtained on December 27, 2022
10 and deposited with Skagit County on February 1, 2023. (RJN Ex. 10 (Dkt. No. 14 at 32-34).)

11 **B. Motions to Disqualify**

12 Plaintiffs seek to disqualify the Skagit County Prosecuting Attorney and Erik Pederson,
13 an attorney for the Skagit County Prosecuting Attorney, on the theory that they have a conflict of
14 interest under Washington Rule of Professional Conduct 1.7 that prevents them from
15 representing Defendants. Plaintiffs argue that it the Prosecuting Attorney cannot represent
16 Defendants because doing so is outside of the Prosecuting Attorney's powers and would be a
17 misuse of public funds, particularly since they believe the County did not timely authorize the
18 representation.

19 **ANALYSIS**

20 **A. Motion for Contempt**

21 There are several problems with Plaintiffs' Motion for Contempt. First, Plaintiffs invoke
22 two sections of Title 18 of the United States Code, which are federal criminal statutes. Plaintiffs
23 lack standing to enforce federal criminal laws. Allen v. Gold Country Casino, 464 F.3d 1044,
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1 1048 (9th Cir. 2006) (no private right of action for violation of criminal statutes). Second, even if
 2 Plaintiffs did have standing, they have failed to show any criminal action. There is no merit to
 3 Plaintiffs' theory that Weyrich lacked a bond and therefore vacated his office. Weyrich obtained
 4 a bond before January 1, 2023, though he deposited it with the County on February 1, 2023. The
 5 fact that the bond was deposited after January 1, 2023, does not mean he vacated his office under
 6 RCW 42.12.010(6). As the Washington Supreme Court has held, not even the failure to obtain a
 7 bond supports a finding of vacancy unless there is also evidence of "intended to violate the law
 8 or wilfully [sic] failed to perform his duty to secure a bond." Recall of Sandhaus, 134 Wn.2d
 9 662, 670 (1998). Here, the bond was obtained and there is no evidence that Weyrich intentionally
 10 or willfully violated the requirement to deposit them before January 1, 2023. This undermines
 11 Plaintiffs' claim that Weyrich violated any provision RCW Title 42 or vacated his office. His
 12 appointment of Pedersen as deputy is not invalid. Third, Pedersen, as a deputy prosecutor, was
 13 not required to obtain a public bond under RCW 36.16.050 and -.060 because the bonding
 14 requirement applies only to officers. "A deputy county clerk is not a county officer." Nelson v.
 15 Troy, 11 Wash. 435, 442 (1895); see also Lee ex rel. Office of Grant Cnty. Prosecuting Attorney
 16 v. Jasman, 183 Wn. App. 27, 48 (2014). Accordingly, this theory lacks merit.

17 The Court finds no merit in Plaintiffs' Motion for Contempt, and DENIES it.

18 **B. Motions to Disqualify**

19 Washington courts are reluctant to disqualify an attorney absent compelling
 20 circumstances. Pub. Util. Dist. No. 1 of Klickitat Co. v. Int'l Ins. Co., 124 Wn.2d 789, 812, 881
 21 P.2d 1020 (1994). Disqualification is considered "a drastic measure which courts should hesitate
 22 to impose except when absolutely necessary." United States ex rel. Lord Elec. Co., Inc. v. Titan
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1 Pac. Constr. Corp., 637 F. Supp. 1556, 1562 (W.D. Wash. 1986) (citing Freeman v. Chicago
 2 Musical Instrument Co., 689 F.2d 715, 721 (7th Cir. 1982)).

3 This Court’s Local Civil Rule 83.3 (a)(2) directs that “attorneys appearing in this district
 4 shall . . . comply with . . . the Washington Rules of Professional Conduct (RPC).” Rule 1.7
 5 states, in full:

6 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the
 7 representation involves a concurrent conflict of interest. A concurrent conflict of interest
 exists if:

- 8 (1) the representation of one client will be directly adverse to another client; or
 9 (2) there is a significant risk that the representation of one or more clients will be
 10 materially limited by the lawyer's responsibilities to another client, a former client
 or a third person or by a personal interest of the lawyer.

11 (b) Notwithstanding the existence of a concurrent conflict of interest under
 paragraph (a), a lawyer may represent a client if:

- 12 (1) the lawyer reasonably believes that the lawyer will be able to provide
 13 competent and diligent representation to each affected client;
 14 (2) the representation is not prohibited by law;
 15 (3) the representation does not involve the assertion of a claim by one
 client against another client represented by the lawyer in the same litigation or
 16 other proceeding before a tribunal; and
 17 (4) each affected client gives informed consent, confirmed in writing
 (following authorization from the other client to make any required disclosures).

18 RPC 1.7.

19 Plaintiffs argue that the Skagit County Prosecutor and Pedersen cannot represent
 20 Defendants because doing so is prohibited by law and therefore in violation of RPC 1.7(b)(2).
 21 (Mot. to Disqualify at 4 (Dkt. No. 33).) The argument misses the mark. RPC 1.7 deals with
 22 conflicts of interest, and Plaintiffs have not identified any conflict of interest. This is fatal to their
 23 motion. Moreover, Plaintiffs have not shown how the representation is prohibited by law. Skagit
 24 County Code permits Skagit County to “provide legal services for the defense of any of its

1 officers, employees or volunteers when a lawsuit against them arises out of an official act or
2 omission if the requirements of this section are met.” Skagit County Code (SCC) 2.20.030(1).
3 And the defense may be provided in cases such as the one Plaintiffs have filed, which arise out
4 of “acts or omissions occurring during their tenure of office or employment.” SCC 2.20.030(2).
5 Plaintiffs suggest that the defense is improper because the Skagit County Code forbids the
6 County to “defend a charge of official misconduct, willful misconduct or to defend the right to
7 hold office.” SCC 2.20.030(2). But Plaintiffs’ complaint does not constitute a charge of official
8 or willful misconduct or the right to hold office. Though undefined in the Skagit County Code,
9 the term “charge” is generally understood to mean “[a] formal accusation of an offense as a
10 preliminary step to prosecution.” CHARGE, Black’s Law Dictionary (11th ed. 2019). Plaintiffs’
11 complaint does not constitute a preliminary step to prosecution, given that Plaintiffs are citizens
12 without the authority to enforce the criminal code provisions they have identified. And even if
13 their complaint could be considered a “charge,” it does not contain colorable allegations of
14 official or willful misconduct or that Defendants are “defend[ing] the right to hold office,” as the
15 Court has explained in its separate Order of Dismissal.

16 The Court also finds no merit in Plaintiffs’ argument that it should disqualify the Skagit
17 County Prosecuting Attorney and Pedersen for not obtaining County approval to represent the
18 Defendants. County Commissioners cannot unilaterally hire another attorney because “county
19 boards of commissioners do not possess statutory authority to appoint outside counsel over the
20 objection of an able and willing prosecuting attorney.” State ex rel. Banks v. Drummond, 87
21 Wn.2d 157, 182 (2016) as amended (Feb. 8. 2017). There is thus a presumption that Defendants
22 had to utilize the prosecutor’s office for their representation. And the County has authorized the
23 Prosecutor and Pedersen to represent the individuals Plaintiffs have sued under the same or
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1 similar misguided theories. (See RJN Ex. 1 (Dkt. No. 14 at 9-12).) Plaintiffs identify no reason
2 why such approvals would not be obtained here. The lack of a formal County-level approval,
3 which may be a state requirement, has not been shown to be grounds for this Court to disqualify
4 Pederson and the Skagit County Prosecuting Attorney. Plaintiffs have not met their heavy burden
5 to justify their request.

6 **CONCLUSION**

7 Plaintiffs' Motion for Contempt and Motions to Disqualify fail to present a colorable
8 basis on which to disqualify defense counsel or hold them in contempt. The Motions are not well
9 founded, and the Court DENIES them.

10 The clerk is ordered to provide copies of this order to Plaintiffs all counsel.

11 Dated August 31, 2023.

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13 Marsha J. Pechman
14 United States Senior District Judge
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